

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 94-70
Table of Allotments)	RM-8474
FM Broadcast Stations)	
(Moncks Corner and Kiawah)	
Island, South Carolina))	

SEP 12 1994

To: Chief, Allocations Branch

REPLY COMMENTS OF ORVILLE RONALD BRANDON

Orville Ronald Brandon, the court-appointed Receiver for Ceder Carolina Limited Partnership,^{1/} licensee of FM broadcast Station WJYQ(FM), Moncks Corner, South Carolina, by his attorneys, hereby replies to the comments of Sampit Broadcasters ("SB") in the above-captioned rule making proceeding.^{2/}

SB opposes Station WJYQ's proposal on the basis that the reference site proposed by Station WJYQ is allegedly located

^{1/} As noted in the Comments filed by Mr. Brandon, since the filing of the request for rule making, Mr. Brandon has been appointed the Receiver for Ceder Carolina Limited Partnership. Both Mr. Brandon and Jermar, Inc., which was the successful bidder at the court-ordered foreclosure sale, support the proposed modification of the allocation for Station WJYQ and the channel substitution at Kiawah Island.

^{2/} Comments and Counterproposal of Sampit Broadcasters, filed August 26, 1994 ("SB Comments"). SB's Counterproposal, which seeks the allotment of FM channels at Kiawah Island, Moncks Corner and Sampit, South Carolina, is the subject of a separate pleading being filed contemporaneously and will not be further discussed herein.

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in a marshy area 2400 meters from the Charleston Executive Airport. In addition, SB asserts that the proximity of Station WJYQ's proposed reference site to the Charleston Urbanized Area makes the station's proposal a *de facto* request for a Charleston station. As demonstrated below, the SB Comments are without merit and represent but an attempt to hinder and delay Station WJYQ's on-going efforts to upgrade and improve its facilities.

**Commission Precedent Does Not Require a Detailed Showing
Regarding Transmitter Site Availability
at the Allotment Stage of an Upgrade Proceeding**

SB asserts that Station WJYQ's proposed site is located in a tidal marsh and is in close proximity to the Charleston Executive Airport where towers are "highly likely to be restricted to an unusable height." SB Comments at 2. SB has failed to provide substantive evidence, as opposed to unsupported allegations from its consulting engineer, in support of these assertions, but, even assuming them to be true, they do not provide a basis for the denial of the upgrade of Station WJYQ as requested.

As demonstrated by the technical exhibit included with the original petition, Station WJYQ's proposed reference site was selected in order to maintain predicted interference-free service to Moncks Corner and to minimize the potential loss area compared to the authorized service from Station WJYQ. Although Station

WJYQ recognizes that a portion of the fully-spaced reference site zone may in fact be located in a tidal marsh (as would be expected in any coastal community), the area also includes a substantial area within which a suitable site can readily be located. See *Technical Statement of John Lundin* ("*Technical Statement*"), attached hereto, at 2-3 & Figure 1.

Furthermore, as SB is undoubtedly aware, it is well established that the Commission does not require detailed showings regarding the availability or suitability of a particular site in rule making proceedings to allot FM channels, beyond the basic requirement that an adequate signal be placed over the community of license from a site which conforms to the spacing rules is identifiable. See, e.g., *FM Table of Allotments (Key West, Florida)*, 3 FCC Rcd 6423 (Policy and Rules Division, 1988). Instead, final site selection and a determination of site availability (and, as necessary, suitability) are ascertained at the time an applicant files an application for construction permit. These factors are not considered routinely during the allotment stage of an upgrade proceeding.

In cases where a "sufficiently compelling showing" is made that no site exists which complies with the Commission's fundamental technical rules, the Commission may refuse to allot the requested channel. In this case, however, SB has failed to

even attempt to make any showing -- much less a "compelling" one -- that there is no site available from which Station WJYQ can operate which complies with the Commission's signal coverage and separation rules. For example, SB has not submitted an aeronautical study or a statement from the Federal Aviation Administration in support of its contention that a site in the proposed reference area would be an air hazard due to the proximity of Charleston Executive Airport. Instead, SB merely speculates that there is no available site for Station WJYQ(FM)'s proposed changes. Accordingly, SB's claims regarding lack of site availability must be disregarded.

**Kiawah Island Is Not Located within the
Charleston Urbanized Area**

Next, SB asserts that "while neither the communities of Kiawah Island nor Moncks Corner are in the Charleston Urbanized Area, the transmitter site selected by Ceder is." SB Comments at 3. Based on this fact alone, SB claims that the upgrade proposal for Station WJYQ must be considered one for Charleston and not for Kiawah Island.

The Commission no longer entertains the broad presumption that applicants proposing to operate from a suburb of large cities do not intend to serve the needs and interests of the suburban communities. *Suburban Community Policy, the Berwick*

Doctrine, and the De Facto Reallocation Policy, 93 F.C.C. 2d 436, 450-51 (Commission, 1983), *recon. denied*, 56 R.R.2d 835 (Commission, 1984); *Faye & Richard Tuck*, 3 FCC Rcd 5374 (Commission, 1988). Moreover, SB has provided no support for its claim that the mere fact that a transmitter site is located within an Urbanized Area is to be considered the same as the specification of a new community of license within an Urbanized Area for purposes of evaluating the allocations priorities of a particular proposal.

Both the proposed operation for Station WJYQ on Channel 288C2 from Kiawah Island and its authorized operation on Channel 287C3 at Moncks Corner result in the provision of reception service across a substantial portion of the Charleston Urbanized Area. Yet this factor has previously been decided by the Commission to be of no real significance. Both Moncks Corner and Kiawah Island are, as SB acknowledges, located outside of the Charleston Urbanized Area; the Commission has already held that Kiawah Island is entitled to a first local transmission service preference despite its proximity to, but location outside of, the Charleston Urbanized Area.^{3/} *FM Table of Allotments*

^{3/} SB's consulting engineering firm, Bromo Communications, Inc., was previously retained by Station WJYQ in its first attempt to upgrade to Class C2 facility at Kiawah Island. It is unusual that this same firm, which supported the prior
(continued...)

(Blackville, South Carolina, et al.), 7 FCC Rcd 6522 (Allocations Branch, 1992). SB has failed to offer any substantive showing that would support its contention; it has chosen only to assert that the selection of a transmitter site (barely) within the Charleston Urbanized Area, standing alone, fatally taints the proposal as one for Charleston rather than Kiawah Island. Consequently, SB's request for a presumption that Station WJYQ proposes to serve Charleston and not Kiawah Island must be dismissed summarily.

**The Current Rule Making Involves
New Substantive Factors that Distinguish It from
the Basis for the Commission's Previous Decision
in MM Docket 91-127**

Finally, SB dismisses the request for an upgrade of Station WJYQ as "a simple 're-hash' of the ... proposal [in MM Docket No. 91-127]." SB Comments, Technical Exhibit at 2. In the Petition for Rule Making filed on behalf of Station WJYQ that resulted in the institution of this proceeding, it was acknowledged that the Commission had previously denied an upgrade for Station WJYQ to a Class C2 station at Kiawah Island in favor

^{3/}(...continued)

efforts, would now seek to raise so strenuously questions regarding the allocations priorities attendant to this proposal, the suitability of a Class C2 operation for Kiawah, and the (hardly unexpected) fact that a transmitter site located on a coastal island will result in service being provided over the Atlantic Ocean.

of the currently authorized Class C3 operation at Moncks Corner. It was there explained that the spacing considerations limiting the location of a Class C2 transmitter site for Kiawah Island had changed since the decision in MM Docket No. 91-127, and that the loss of interference-free service across Moncks Corner, which figured so prominently in the Commission's decision in the earlier case, could now be substantially reduced by a station operating within the permissible fully-spaced site zone for Channel 288C2 at Kiawah Island.^{4/} This fact not only distinguishes the current rule making request submitted for Station WJYQ from the circumstances considered in MM Docket No. 91-127, but also provides the basis for the Commission's grant of the current request for the reasons previously set forth.

Conclusion


As the Commission observed in the *Notice of Proposed Rule Making*, the changes proposed by Station WJYQ will serve the public interest by providing Kiawah Island with its first aural transmission service and will permit a significant increase in service by Station WJYQ. *FM Table of Allotments (Moncks Corner*

^{4/} Indeed, the Technical Exhibit submitted with the petition for rule making herein asserted further that, because of additional flexibility that will be available to Station WJYQ at the application stage, the station will likely be able to provide better than 1.0 mV/m service across all of Moncks Corner.

and Kiawah Island, South Carolina), *Notice of Proposed Rule Making*, 9 FCC Rcd 3136, ¶ 3 (Allocations Branch, 1994). None of the objections raised by SB presents any basis on which to reject the proposed upgrade of the station. As is explained in a separate *Motion for Summary Dismissal* being filed today, the Counterproposal submitted by SB is unacceptable and must be dismissed. Mr. Brandon therefore urges that the Commission adopt the allocation changes set forth in the *Notice of Proposed Rule Making* and modify the license and construction permit of Station WJYQ accordingly.

Respectfully submitted,

ORVILLE RONALD BRANDON,
RECEIVER FOR CEDER CAROLINA
LIMITED PARTNERSHIP

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September 12, 1994

TECHNICAL STATEMENT
SUPPORTING REPLY COMMENTS OF
ORVILLE RONALD BRANDON
MM DOCKET 94-70

INTRODUCTION

These technical comments and attached exhibit have been prepared on behalf of Orville Ronald Brandon, Receiver (ORB), licensee of station WJYQ(FM) at Moncks Corner, South Carolina.¹ In the FCC's Notice of Proposed Rule Making (NPRM) in MM Docket 94-70, it is proposed to upgrade WJYQ to channel 288C2 (105.5 MHz) and change city of allotment from Moncks Corner, South Carolina to Kiawah Island, South Carolina. This response from ORB is in reply to comments filed in MM Docket 94-70.

ORB filed comments stating his continued interest in the proposed allotment of channel 288C2 to Kiawah Island. Information was provided concerning the number of available radio services in the proposed channel 288C2 gain area. Comments and a counterproposal were filed by another party.²

Sampit Broadcasters (SB) question the validity of ORB's proposed channel 288C2 reference site. SB alleges the channel 288C2 proposed reference site, because of its proximity to the Charleston Urbanized Area, makes

¹ Orville Ronald Brandon is the successor-in-interest to Cedar Carolina Limited Partnership, the original petitioner in MM Docket 94-70.

² Sampit Broadcasters' counterproposal is the subject of a separate response submitted by ORB.

it a request for a Charleston station. SB further suggests a lower class for Kiawah Island instead of the ORB Class C2 proposal. Finally, SB claims the ORB proposal is a substandard allotment.

DISCUSSION

As noted in the WJYQ Petition for Rule Making (PRM), the proposed channel 288C2 reference site was selected to place it close to Moncks Corner in order to maintain predicted 1 mV/m (60 dBu) service to Moncks Corner and minimize the potential loss area. The proposed channel 288C2 reference site was arbitrarily selected to achieve this purpose. This is somewhat similar to the FCC staff selecting a site restricted reference point in close proximity to the requested community.

Exhibit #1 attached to the original petition (Useable Area Map for Channel 288C2) shows a substantial area within which to locate a transmitter site for channel 288C2 in compliance with the FCC's minimum separation requirements. The area for channel 288C2 includes significant portions of James Island and Johns Island. Figure 1 attached shows a portion of the area to locate channel 288C2 on large scale 1/24,000 scale topographic maps. It is believed this map demonstrates a substantial area within which to locate a suitable site for channel

288C2.⁴³ The actual selection of a site, its availability, the ascertainment of reasonable assurance for use, and notification to the FAA is appropriate at the application stage, not the rule making stage.

SB alleges that since the assumed channel 288C2 reference point is located just within the Charleston Urbanized Area, the proposal is for a new Charleston FM station. The communities of allotment are what is pertinent, not the arbitrary locations of reference sites. As noted in the original petition, the present WJYQ city of allotment (Moncks Corner) and the proposed city of allotment (Kiawah Island) are both located outside the Charleston Urbanized Area. SB's comments concur with this.

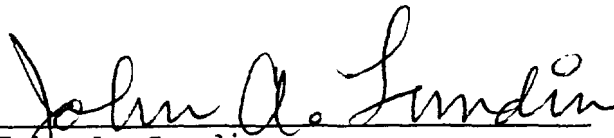
Throughout its comments, SB contends that the ORB proposal for channel 288C2 is "substandard" and wasteful of FM spectrum. ORB has already provided population information for the proposed channel 288C2 allotment, which reports that channel 288C2 would provide predicted 1 mV/m service to 468,867 people, and a net gain in 1 mV/m service to 250,238 people when compared to the initial Class A allotment at Moncks Corner. Additionally, it is inevitable that any FM service at Kiawah Island will direct some proportion of the signal over water. What is

⁴³ In addition to the area shown on the maps for channel 288C2, there are additional areas which will be available for consideration at application time in accordance with Section 73.215 of the FCC rules. Stations WDAR-FM on channel 288C3 at Darlington, South Carolina and WZNY on channel 289C at Augusta, Georgia are both authorized under Section 73.215. Station WDAR-FM represents the north site restriction for channel 288C2, and WZNY represents the west site restriction.

of significance, however, is the number of people served by the respective proposals. It then suggests a Class A operation on Channel 288 instead of ORB's proposal for a Class C2 operation. The estimated population (1990 Census) within the predicted 1 mV/m contour for a maximum facility operation on channel 288A (6 kW, 100 meters) at SB's proposed reference site is 147,413 people. When compared with ORB's channel 288C2 proposal (468,867 people) the SB proposal is markedly inferior.

I, John A. Lundin, am Vice President of du Treil, Lundin & Rackley, Inc., a consulting communications engineering firm located at 240 North Washington Boulevard, Suite 700, Sarasota, Florida, 34236. I am a registered professional engineer in the District of Columbia (#7499) and the State of Florida (#46454). My qualifications as an engineer are matter of record with the Federal Communications Commission.

The attached technical report has been prepared for Orville Ronald Brandon (ORB). The calculations and exhibits contained in this report were made by me personally or under my direction. All facts contained therein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true.


John A. Lundin

Registered Professional Engineer
DC No. 7499
FL No. 46454

September 9, 1994



Maped, edited, and published by the Geological Survey
Control by USGS and USCGS
Culture and drainage from controlled aerial photographs
Aerial photographs taken 1957. Topography by planimetric
surveys, 1958-1959
Hydrography compiled from USCGS charts 792 and
1219 (1959)
Foghorn projection, 1927 North American datum
10,000 foot grid based on South Carolina coordinate system,
south zone
1500 meter Universal Transverse Mercator grid ticks,
zone 17, shown in blue
Is shown on the predicted North American Datum 1983,
more the projection lines 16 meters south and
19 meters west as shown by dashed corner ticks

7th EDITION AND 1973 MAGNETIC NORTH
DECLINATION AT CENTER OF SHEET

SCALE 1:24,000
CONTOUR INTERVAL 5 FEET
NATIONAL GEODETIC VERTICAL DATUM OF 1929
DEPTH CURVES AND SOUNDINGS IN FEET-DATUM TO MEAN LOW WATER
SOUNDING CURVES SHOWS THE PROPOSED LINE OF MEAN HIGH WATER
THE MEAN RANGE OF TIDE IS APPROXIMATELY 5.5 FEET

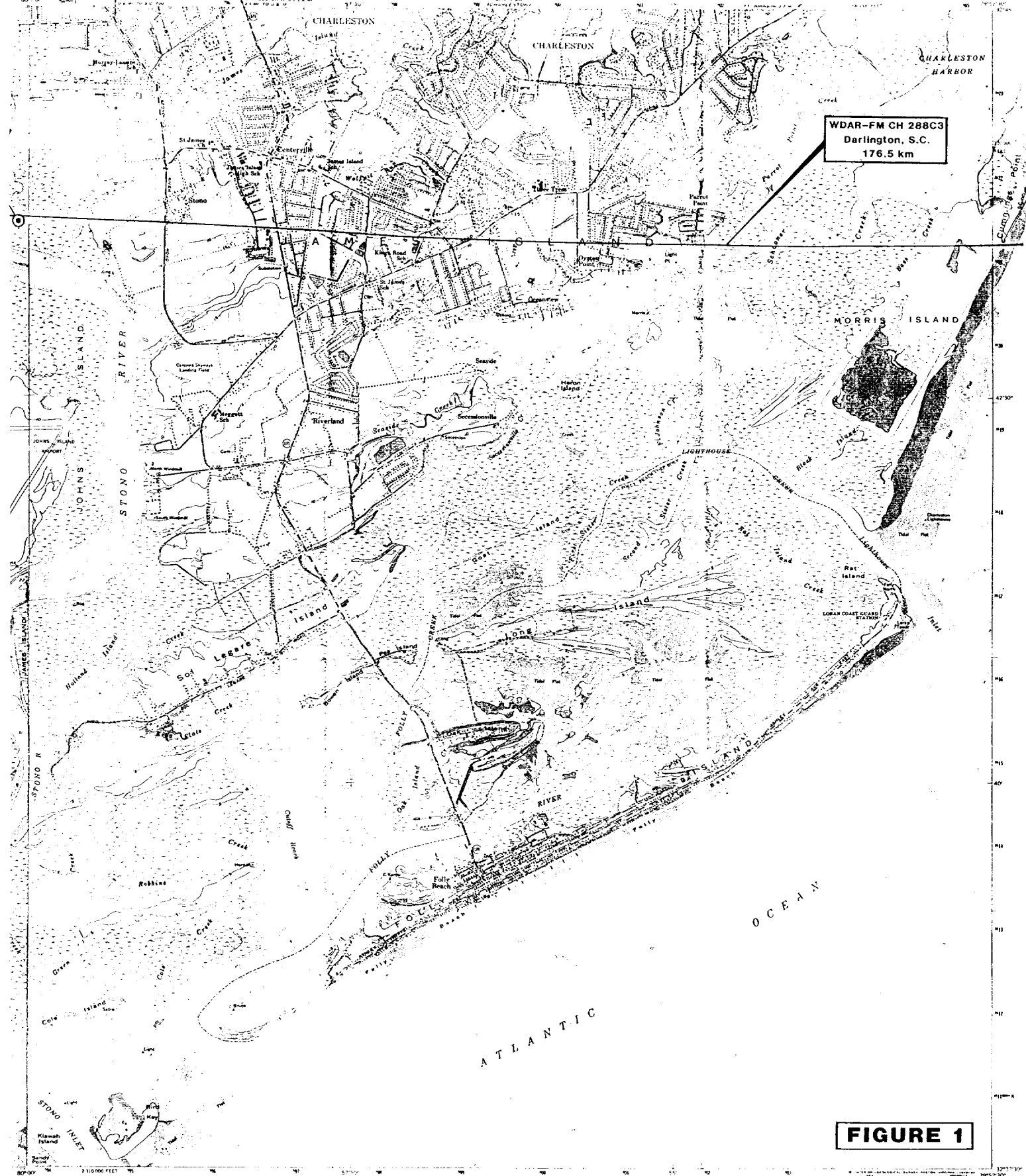
THIS MAP COMPLES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U.S. GEOLOGICAL SURVEY
DENVER, COLORADO 80202 OR RESTON, VIRGINIA 20192
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

Revisions shown in purple compiled from aerial
photographs taken 1971. This information not
being checked

ROAD CLASSIFICATION
Heavy duty
Medium duty
Light duty
Unimproved dirt
State Route

LEGAREVILLE.

32000 F1 1E 02
1959
PHOTOREVISED 11
DMA 5548 II ME. SERIE



WDAR-FM CH 288C3
Darlington, S.C.
176.5 km

FIGURE 1

Maped, edited, and published by the Geological Survey
Control by USGS, USCGS and USCE
Culture and drainage from controlled aerial photography
Aerial photographs taken 1957. Topography by planimetric surveys, 1950
Hydrography compiled from USCGS charts 792 (1957), 491 (1958),
and 1295 (1956)
Polyconic projection. 1927 North American datum
10,000 foot grid based on South Carolina coordinate system
South zone
1000 meter Universal Transverse Mercator grid, zone 17, shown in blue
There may be possible inclusions within the boundaries
of the National or State reservations shown on this map
Reservations shown in purple, compiled from aerial
photographs taken 1977 and other source data. This
information has been checked. Map dated 1979

SCALE 1:24,000
CONTOUR INTERVAL 5 FEET
NATIONAL GEODETIC VERTICAL DATUM OF 1929
DEPTH CURVES AND SOUNDINGS IN FEET, DATUM IS MEAN LOW WATER
THE RELATIONSHIP BETWEEN THE TWO DATUMS IS VARIABLE
SOUNDING SHOWS REPRESENTS THE APPROPRIATE LINE OF MEAN HIGH WATER
THE AVERAGE RANGE OF TIDE IS APPROXIMATELY 5.7 FEET
THIS MAP COMPLES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U.S. GEOLOGICAL SURVEY, RESTON, VIRGINIA 20092
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

ROAD CLASSIFICATION
Main Road
Light duty
Unimproved dirt
State Road

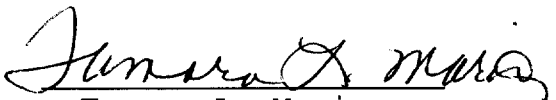
JAMES ISLAND, S. C.
N 32° 17' 5" W 79° 52' 5" E
1959
PHOTOGRAPHED 1979
AMS 5648 III NW, SERIES 5110

Certificate of Service

I, Tamara L. Mariner, certify that a copy of the foregoing "Reply Comments of Orville Ronald Brandon", has been hand delivered this 12th day of September, 1994 to the following:

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